Office-Supreme Court, U.S.
FILED
SEP 4 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 457

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ABRAHAM RAIJ,

Respondent.

Petition for a Writ of Certiorari to The Supreme Court of Florida

JAMES A. DIXON
9th Floor, Dade Federal Bldg.
101 East Flagler Street
Miami, Florida

SAM DANIELS
1414 Dupont Bldg.
Miami, Florida

INDEX OF SUBJECT MATTER

	Page
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS	1, 2
JURISDICTION	2
QUESTIONS PRESENTED FOR REVIEW	2, 3
THE STATUTES AND DECREES INVOLVED	3
STATEMENT OF THE CASE	3
LAW NO. 568	4, 5
LAW NO. 581 AND RESOLUTION NO. 3	5, 6, 7
REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF	7, 8, 9
CONCLUSION	9

TABLE OF CASES AND STATUTES

	Page
American Banana Co. v. United Fruit Co., 213 U.S. 347	9
Banco Nacional de Cuba v. Sabbatino et al, 11 L. Ed. 804	5, 9
Cuban Law, 568	3, 4, 5, 7
851	3, 5, 6
Oetjen v. Central Leather Co., 246 U.S. 297	9
Pan-American v. Recio, 154 So. 2d 197	2
Raij v. Pan-American, 19 Fla. Supp. 162	3
Resolution No. 1 In pursuance of Cuban Law 851	5
Resolution No. 3 In pursuance of Cuban Law 851	3, 5, 6
Shapleigh v. Mier, 299 U.S. 468	9
Underhill v. Hernandez, 168 U.S. 250	9
U. S. v. Belmont, 301 U.S. 324	9
U. S. v. Pink, 315 U.S. 203	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. .....

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ABRAHAM RAIJ,

Respondent.

Petition for a Writ of Certiorari to The Supreme Court of Florida

---

Pan-American Life Insurance Company respectfully prays that a writ of certiorari issue to review the judgment of The Supreme Court of Florida, entered herein on April 22, 1964, with rehearing denied June 10, 1964, which affirmed a judgment entered in the Circuit Court of Dade County, Florida, in favor of the respondent herein.

OPINIONS BELOW

The opinion of the Circuit Court of Dade County, Florida, is reported in 19 Fla. Supp. 162.

The opinion of the Florida District Court of Appeal,

Third District, is reported in 156 So. 2d, 785. This opinion affirms, per curiam, the judgment of the Circuit Court of Dade County, on the authority of an opinion of the said District Court of Appeal, in another companion case, Pan-American Life Insurance Company, Appellant v. Recio, which is reported in 154 So. 2d 197.

The Respondent herein filed in The Supreme Court of Florida a petition for a writ of certiorari from that court to the said District Court of Appeal. This petition was granted by an order dated March 25, 1964, then denied by an order dated April 22, 1964. Both orders are reported in 164 So. 2d 204. The order denying the petition for re-hearing on June 10, 1964 is not yet reported.

JURISDICTION

The date of the judgment sought to be reviewed and the time of its entry is June 6, 1962 and September 20, 1962, with petition for re-hearing denied October 18, 1962. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257, (3). No extension of time to petition for certiorari has been sought.

QUESTIONS PRESENTED FOR REVIEW

Two questions are presented by this record. They are:

1. May the Courts of this country hold invalid a law promulgated by a recognized foreign sovereign (the Republic of Cuba) which restricted the rights of its nationals to whom money is owed to receipt of payment

only in Cuba and only in Cuba pesos, without a special permit from the National Bank of Cuba?

2. May the Courts of this country hold invalid a law (and an implementing executive resolution) of a recognized foreign sovereign, which expropriated the Cuban assets of an American life insurance company doing business there, and substituted the Cuban State as the obligor on outstanding insurance policies, at least in so far as the rights of Cuban nationals are concerned?

THE STATUTES AND DECREES INVOLVED

The Statutes, Executive Agreement and Decrees involved are:

(1) Cuban Law No. 568 of September 29, 1959. The pertinent test thereof is set forth in the Appendix hereto, page 1.

(2) Cuban Law No. 851 of July 6, 1960, and Resolution No. 3 of October 24, 1960, promulgated in pursuance of Law No. 851. The pertinent test thereof is set forth in the Appendix hereto, pages 5 and 7.

STATEMENT OF THE CASE

This action was filed in the Circuit Court of Dade County, Florida, by Abraham Raij as the insured in a policy of insurance issued by Pan-American Life Insurance Company in Cuba in 1942.

The policy was originally payable in dollars.

On January 1, 1959, the government of which Fidel Castro was and is Premier came into power. A few days later, the United States extended diplomatic recognition to that Government, which has continued to this day.

LAW NO. 568

On September 29, 1959, the Republic of Cuba adopted Law No. 568, mentioned above. The text, in Spanish and English, was introduced in evidence in the trial court. An experienced Cuban lawyer, testified that under this law it was a felony for any Cuban national to make or receive payment of a debt thereafter becoming payable anywhere except in Cuba, or in any currency except Cuban pesos, without a special permit from the National Bank of Cuba. This law also made it a felony for a Cuban national to have credits set up for him in a foreign nation, without the specified permit.

The plaintiff is and was at all times a national of Cuba and did not have the required permit.

These facts raised the first of the questions presented stated above. This question was first raised in the trial court in the answer filed by the defendant. During the trial, it was raised by the offer into evidence of the texts of Law No. 568 and the testimony of a Cuban Lawyer. It was also raised by the defendant's motion for new trial, by assignment of error on appeal, and in briefs and argument in the District Court of Appeal. The testimony of the Cuban lawyer was disregarded, though uncontradicted. The petition for rehearing was denied. The assignments of error were not upheld.

The effect of the holding of the trial court in this case, and of the District Court of Appeal in this and the Recio case, is to hold Law No. 568 invalid and of no effect upon the rights of Cuban nationals, and deprives the American company of a defense properly available to it under Cuban law.

It is believed that this is, in effect, a decision denying the application of the Act of State doctrine, in circumstances in which this Court for many years has held it applicable.

LAW NO. 851 AND RESOLUTION NO. 3

Law No. 851 was promulgated on July 6, 1960. It shows on its face that it was in retaliation against the reduction of the Cuban sugar quota by the United States. It is the same law involved in the case of Banco Nacional de Cuba v. Sabbatino, et al, 11 L. Ed. 2d 804.

Law No. 851 authorized the issuance of subsequent resolutions of intervention and expropriation against United States concerns and Cuban concerns subject to American control. Resolution No. 1 under this law is involved in the Sabbatino case. The present case involves Resolution No. 3 thereunder.

Resolution No. 3 was promulgated on October 24, 1960. It starts off with a long recital of the reasons for its issuance. Section 1 then proceeds to decree the intervention and expropriation of a long list of businesses, broken down into groups according to the nature of their business. In group XX are listed numerous insurance companies, including Pan-American Life Insurance Com-

pany. The concerns in this group were assigned for administrative purposes to the Social Security Bank, which was authorized to appoint an administrator. Two days later, the administrator so appointed appeared at the Havana branch office of Pan-American and at gun-point took possession of the office, its records and the key to the safe deposit box in which its securities and reserves against its Cuban liabilities were kept.

Resolution No. 3 went further than expropriation. In Section 2, it provided, among other things, that the Cuban State was substituted as obligor upon the outstanding liabilities of the expropriated concerns. The plaintiff's claim to benefits under the policy herein involved was among these liabilities.

In the trial court, the defendant offered the testimony of the Cuban Lawyer who stated that the effect of this law and resolution was to terminate the liability of Pan-American to the plaintiff and to confine the plaintiff, a Cuban national, to his rights against the Republic of Cuba under Section 2. His testimony was uncontradicted.

The trial court, as stated above, rejected the defendant's contentions based on Law No. 851 and Resolution No. 3. The effect of the holding was that the law and resolution were ineffectual to accomplish the result expressed in Section 2 and confirmed by the testimony of the Cuban lawyer. The holding deprived the defendant of a defense afforded it under Cuban law.

This question was raised in the answer, by the introduction of the Spanish and English texts of the legisla-

tion, by the testimony of the Cuban lawyer, by the motion for new trial and by assignment of error on appeal. The record reference for the legislative text is page 10. All other references are the same as for Law No. 568.

It is believed that this is a decision denying the application of the Act of State doctrine in circumstances in which this Court has for many years held the doctrine applicable. As such, it is a decision of a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. This case is equally as important in the field of international relations as the Sabbatino case. This case represents the other side of the coin under examination in Sabbatino. This case involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban nationals in the United States.

Sabbatino involved the application of the Act of State doctrine to the territorial sovereignty of Cuba. This case involves the application of the Act of State doctrine to the personal sovereignty of Cuba over its nationals.

Pan-American Life alone had outstanding more than 6000 policies issued through its Havana branch. It is impossible to know how many of these policy-holders or beneficiaries are among the hundreds of thousands of Cubans now resident in the United States. It is known that there are many of these policies presently in litiga-

tion, and more to come. There are about twenty such suits pending the State and Federal courts in Miami alone. Others have been filed in Jacksonville, New Orleans, Galveston, Shreveport, Raleigh, Newark, and San Juan, Puerto Rico.

One lawyer in Miami says he has two hundred more ready to be filed and one other American company is informed that several hundred more are available for filing in the New York city area alone. One Cuban lawyer is known to have run advertisements in Spanish-language papers in San Juan and Miami offering his services in the collection of policy benefits.

The pending suits involve all kinds of policy claims—death benefits, cash surrender values, annuities, endowments, as well as declarations that the companies must accept premiums to keep policies in force and pay benefits upon future demand. Some cases are in State Courts, others in the Federal courts.

All of these cases basically are to be decided upon questions of Federal law. The decision of these Federal questions should be uniform throughout the country and free from the vagaries of decisions by courts of differing judicial systems. The only way such uniformity can be achieved is by a decision of this court. If it is adverse to the companies, they will undoubtedly pay their debts. If it is favorable to the companies, the decision of this court will put an end to the impending flood of litigation. In either event, there will be an enormous saving of money, legal manpower and judicial labor.

2. The effect of the decision in this case is in con-

flict with numerous decisions of this Court applying the Act of State doctrine to the acts of a foreign sovereign then or later recognized diplomatically by this country. These are Oetjen v. Central Leather Co., 246 U.S. 297; Underhill v. Hernandez, 168 U.S. 250; American Banana Co. v. United Fruit Co., 213 U.S. 347; Shapleigh v. Mier, 299 U.S. 268; U. S. v. Belmont, 301 U.S. 324; U. S. v. Pink, 315 U.S. 203, and most recently, Banco Nacional de Cuba v. Sabbatino.

Sabbatino clearly held that the application of the Act of State doctrine is a Federal question. The state court in this case has decided the question in a way almost certainly not in accord with the decisions of this cause.

CONCLUSIONS

It is respectfully submitted that this petition for a writ of certiorari be granted.

James A. Dixon
9th Floor, Dade Federal Bldg.
101 East Flagler Street

Sam Daniels
1414 Dupont Bldg.
Miami, Florida

Office Supreme Court, U.S.
FILED
SEP 4 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 457

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ABRAHAM RAIJ,

Respondent.

Appendix to Petition for a Writ of Certiorari to The Supreme Court of the State of Florida

JAMES A. DIXON,
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami, Florida.

SAM DANIELS,
1414 DuPont Bldg.,
Miami, Florida.
Attorneys for Petitioner

INDEX OF SUBJECT MATTER

	Page
PERTINENT TEXT OF CUBAN MINISTRY OF JUSTICE LAW NO. 568 (FOREIGN EXCHANGE CONTRABAND LAW)	App. 1-4
PERTINENT TEXT OF CUBAN NATIONALIZATION LAW NO. 851	App. 5-6
PERTINENT TEXT OF RESOLUTION NO. 3, UNDER PROVISIONS OF LAW NO. 851	App. 7-8
OPINION OF CIRCUIT COURT OF DADE COUNTY, FLORIDA, DATED JUNE 6, 1962, IN THE CASE OF RAIJ v. PAN-AMERICAN LIFE INSURANCE COMPANY, 19 Fla. Supp. 162	App. 9-15
OPINION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, PAN-AMERICAN LIFE INSURANCE COMPANY v. RAIJ, 156 So. 2d 785	App. 16
OPINION OF DISTRICT COURT OF APPEAL, OF FLORIDA, THIRD DISTRICT, DATED MAY 7, 1963, IN THE CASE OF PAN-AMERICAN LIFE INSURANCE COMPANY v. RECIO, 154 So. 2d 197	App. 18
OPINIONS OF THE SUPREME COURT OF FLORIDA IN THE CASE OF PAN-AMERICAN LIFE INSURANCE COMPANY v. RAIJ, 164 So. 2d 204	App. 23-24
ORDER OF THE SUPREME COURT OF FLORIDA DENYING PETITION FOR REHEARING	App. 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. _____

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ABRAHAM RALJ,

Respondent.

Appendix to Petition for a Writ of Certiorari to The Supreme Court of the State of Florida

---

MINISTRY OF JUSTICE
LAW No. 568

(FOREIGN EXCHANGE CONTRABAND LAW)

I, Osvaldo Dorticos Torrado, President of the Republic of Cuba, do hereby proclaim that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS: Title II of Law No. 13 of December 23, 1948, provided for the organization of the Currency Stabilization Fund, and entrusted it with the fundamental mission of protecting the national currency on the ex-

change market, for which purpose the legislation supplementary thereto broadened the scope of its powers vesting it with the authority necessary for the regulation of international exchange transactions.

WHEREAS: During the years in which the tyranny was in power a constant drainage of foreign exchange was propitiated to cover the funds taken away by the beneficiaries of the deposed government, a practice which some interested parties are still trying to continue through speculation and by deviating the channels of incoming foreign exchange on which the nation depends, or by the remittance of foreign funds through illegal methods, thereby ostensibly delaying the restoration of our monetary reserves and the preferential application of the national resources to the economic development of the nation.

WHEREAS: It is necessary therefore, to define clearly and precisely the felonious acts constituting crimes against the economy of the nation, fixing the penalties applicable to the different degrees of criminal liability, and to confer upon the Currency Stabilization Fund and the judiciary the broad powers required for the protection of the general interest of the Republic.

NOW, THEREFORE: In pursuance of the powers vested in it, the Council of Ministers has resolved to enact the following

LAW NO. 568

Article 1—For the purposes of this law, the following are considered felonies of monetary contraband:

6. To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, travellers checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

7. To export or import national currency in excess of the limit that set now or hereafter by the Currency Stabilization Fund.

8. To establish credits in national currency for persons residing abroad or for residents of Cuba for the account of residents abroad.

9. To assign or transfer credits in national currency to residents abroad, make payments for their account in national currency and set up credits in bank accounts the holders whereof reside abroad without first complying with the rules issued by the Currency Stabilization Fund in this respect.

10. To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

11. To secure financing payable abroad in foreign currency without the prior authorization of the Currency Stabilization Fund, except for transactions of banks as-

sociated to the Banco Nacional de Cuba with their home offices or foreign correspondents, for the establishment of letters of credit, overdrafts and other normal activities of the banking business.

12. Any other violation or infringement of the rules of the Currency Stabilization Fund under which funds are transferred or remitted abroad in violation of the prohibitive rules of the same Fund or in a larger amount than is permitted thereby.

App. 5

CUBA
NATIONALIZATION LAW

July 6, 1960[1]

[Translation]

WHEREAS: The attitude assumed by the Government and legislative power of the United States of America of constant aggression for political purposes against the fundamental interests of the Cuban economy, emphatically evidenced by the amendment recently passed by the Congress of said country to the Sugar Act at the request of the executive power, by which the President of that nation is granted exceptional powers to reduce the participation of Cuban sugar in the sugar market of that country, as an arm of political action against Cuba, obliges the Revolutionary Government to adopt without hesitation, also the measures that it may deem pertinent for the defense of the national sovereignty and the free economic development of our country.

WHEREAS: Article 24 of the fundamental law authorizes the expropriation of properties referring to the regular law the naming of the authority competent to order the expropriation as well as the regulation of the procedure, and of the means and forms of payment.

WHEREAS: It is convenient for the achievement of the purposes proposed in the first WHEREAS clause of this law to grant to the President of the Republic and

---

[1] Cuba, Gaceta Oficial, July 7, 1960; Folletos de Divulgacion Legislativa, XXII Leyes del Gobierno de la Revolution (julio 1960), p. 29.

to the Prime Minister full powers to proceed with the nationalization of all concerns and properties of natural or juridical persons of the United States of America or of the concerns in which said persons have a majority interest or share, even though they may be organized under the Cuban laws, in order that in each future circumstance adequate measures for said purposes may be adopted.

THEREFORE: In use of the powers vested in it, the Council of Ministers has resolved to enact the following Law Number 851:

ARTICLE 1: The president of the Republic and the Prime Minister are authorized to order jointly by means of resolutions, whenever they may deem it convenient in defense of the national interest, the nationalization through expropriation, of the properties or concerns belonging to natural or juridical persons, nationals of the United States of America, or the concerns in which said persons have a majority interest or participation even though they be organized under the laws of Cuba.

ARTICLE 2: The President of the Republic and the Prime Minister in the resolution in which they order the expropriation shall declare its necessity and the cause of public use or national interest that has caused it.

ARTICLE 3: The President of the Republic and the Prime Minister in the resolutions referred to in Article 1 shall also appoint the persons or organizations that shall have charge of the properties or concerns subject of the expropriation.

RESOLUTION NO. 3

WHEREAS, The imperialist interests whose representatives control the Government of the United States of North America; in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

WHEREAS, Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

WHEREAS, That measure, in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

WHEREAS, It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government, each day with more virulence, to employ the most unjust aggressions against our country.

WHEREAS, It is the duty of the Revolutionary Government to defend the economy of the country.

WHEREAS, Moreover, it is fundamental for the

liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.

THEREFORE, In use of the powers with which we are vested, in accordance with the provisions of Law No. 851 of June (sic July), 1960.

RESOLVED

FIRST There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

Group XX — Insurance Companies
Pan American Life Insurance Co

* * * *

SECOND, Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridicial persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

RAIJ v. PAN AMERICAN LIFE INS. CO.
No. 61-C-7089

Circuit Court, Dade County

June 6, 1962.

19 Fla. Supp. 162

Hal P. Dekle, Circuit Judge

Plaintiff purchased from defendant in 1942 a life insurance policy which was issued from the defendant's home office in New Orleans but delivered in Cuba to the plaintiff, a Cuban national and a resident of Cuba at that time. This was a twenty year endowment policy and all premiums were paid to and accepted by defendant until November 1960, when the premium was refused and returned. Subsequent tenders of such premiums have been refused and plaintiff seeks a declaration of his rights to pay the premium and to require the defendant to accept them and further to declare that such policy is in full force and effect.

Defendant admits issuance of the policy and payment and tender of premiums but disclaims any further liability under the policy, inter alia, on the ground that the Castro Revolutionary Government of Cuba on October 24, 1960, by its now well known Resolution #3, forcibly expropriated the Cuban division of defendant insurance company and substituted the present Cuban Revolutionary Government as "obligor" on all of defendant's Cuban liabilities and contracts, including plaintiff's insurance policy in question.

Although defendant asserts that the place of performance for payment of premiums and benefits is in Cuba, the contract itself provides—"All payments regarding this policy, made either by the company or the insured, will be made in the City of New Orleans in legal currency of the United States of America."

"The law of the place of performance generally governs the contract and its discharge." Conflict of Laws, Sec. 385; Zimmerman v. Sutherland, 274 U.S. 253, 47 S. Ct. 625, 7 L. Ed. 1034.

The provisions of the contract for payment of the policy in New Orleans in United States dollars controls therefore unless defendant shows that such terms have been effectively changed. Defendant urges that this has been changed by virtue of a Cuban resolution prior to Castro, that after April, 1951, the United States dollar would cease to be legal tender in Cuba and that all contracts theretofore payable in dollars would be payable only in pesos. Defendant also asserts post-Castro law #568, prohibiting defendant from paying any monies to Cuban nationals anywhere except in Cuba, but counsel very wisely does not assert any argument of an extra-territorial effect, that such a Cuban law could affect the defendant in this bastion of freedom.

Of interest in this respect is Anglo-Continentale Treuhand, A.G. v. St. Louis Southwestern Rwy. Co., CCA 2 1936, 81 Fed. 2d 11, which deals with a contract providing for payment of bonds, either in gold or in the currency of several countries, including guilders in Holland. Plaintiff presented the bonds for payment in Amsterdam, giving rise to the question whether they thereby became payable

in dollars calculated at the gold par of the guilder or, as defendant there contended, at the rate of exchange in New York. Plaintiff's choice prevailed. Defendant asserted the congressional joint resolution removing the United States from the gold standard, urging that such U. S. law thus changed the choice provided in the contract. The court held to the contrary, and said at page 12—

> " . . . In its impact upon alien obligees as well, if construed as the defendant wishes, the resolution would have results which we ought not to impute to Congress gratuitously. It may be too much to say that a statute would be void which should undertake to discharge a citizen from a contract with an alien to be performed abroad; conceivably if the alien had to seek the obligor here, the statute would protect him. Yet no court of the place of performance would pay the least attention to it, if the citizen or his property fell within its power; by the law of most civilized countries the legality of the performance of a contract depends upon the law of the place of performance, and a contract is enforceable, if lawful by the law of the place of making when made, and if the performance is lawful by the law of the place of performance when due. Certainly that is true of our own law. Restatement of Conflict of Laws, #360. If the resolution had meant to prescribe otherwise, it would in substance have been an invasion of the prerogative of other states, and would be properly resented as contrary to the implications of mutual comity: we are justified in insisting that a statute must make such an intent plain beyond any doubt . . ."

Does the pre-Castro resolution effective in 195[illegible] changing method of payment from dollars to pesos abrogate the private contract of insurance here? I do not believe that it does, absent recognition or adoption thereof by the parties which I do not find from the evidence. To grant such effect would of course be contrary to our basic precepts of contract and constitutional law. Defendant cites various cases recognizing actions of foreign countries and contrary to such principles, which point out that the nationals of those countries are bound by their own laws even though they do not comport with our recognized and cherished standards against abrogation of contract and confiscation without due compensation. Many of those cases deal directly with the particular res or property involved, as bank accounts, vessels, etc. See Salinoff v. Standard Oil Co., 262 N.Y. 220, 186 N.E. 679, 89 A.L.R. 345, U.S. v. Belmont, 30 U.S. 324, 81 L.Ed. 1134; Tillman v. Nat'l. City Bank of N.Y., 118 Fed.2d 631; Bernstein v. Van Heyghen, etc., 163 Fed.2d 246; Banco de Espana v. Federal Reserve Bank, 114 Fed.2d 438; Pons v. Republic of Cuba, 291 Fed.2d 925; Pasos v. Pan American Airways, 229 Fed.2d 271; The Clavereck, 264 Fed. 276; American Banana Co. v. United Fruit Co., 213 U.S. 347, L.Ed. 826.

The burden of defendant's argument in this respect is that Cuban nationals are bound by such Cuban laws so as to prevent a decree on the subject contract against defendant. These cases have been studied. The trouble with defendant's contention is the express provision of an independent, private contract here, upon which plaintiff relied and remains entitled to rely and the fact that the evidence shows that payments of premiums were continued to be made in United States dollars in compliance with the terms of the contract so that both parties con-

tinued to recognize the contract and not the Cuban resolution. It appears from the evidence that on some occasions pesos may have been used but converted to dollars in making premium payments.

To hold as defendant urges would make it impossible for foreign nationals to rely upon United States contracts and the express provisions thereof which would be reasonable inducements to such contracts. Neither can this court accept a proposition that would be in effect unilateral in avoiding liability. Seizure of defendant's business as unfortunate and abhorrent as it may be, is perhaps an incident risk of defendant doing business in a revolutionary climate. The seizure was of the defendant's —not the plaintiff's—interests and is not the same as the cases which defendant cites regarding confiscation of property which was the very subject matter of such other suits. Nor is there proof here of a novation which might effectively substitute the foreign government for the defendant as insurer as in Tillman v. National City Bank of N. Y., supra. Mutuality is of course an essential to a novation.

The case of Dougherty v. Equitable Life Assurance Society, 226 N.Y. 71, 193 N.E. 897, cited by defendant as in point, is distinguished by the express provisions in the contracts there that they were payable in Russian rubles from funds in Russia and were to be controlled by Russian law. Similarly Heinne v. N. Y. Life Ins. Co., 50 Fed. 2d 382, is distinguished where policies provided for payment in German marks. The Dougherty opinion notes at page 899—"The right to a sum of money due upon contract is to be determined by the terms of that contract the world over."

The court cannot justify a tendered distinction which would deny justice to Cuban nationals under these circumstances and rejects the contention that the courts of this country should not afford a forum to these distressed plaintiffs who find themselves homeless and without remedy in their own country. We would not forget the inscription on the Statue of Liberty from another great and grateful people, of France, in 1884—

> "Not like the brazen giant of Greek fame,
> With conquering limbs astride from land to land;
> Here at our sea-washed, sunset gates shall stand
> A mighty woman with a torch, whose flame,
> Is the imprisoned lightning, and her name
> Mother of Exiles. From her beacon-hand
> Glows world-wide welcome; her mild eyes command
> The air-bridged harbor that twin cities frame.
> 'Keep ancient lands, your storied pomp' cries she
> With silent lips. 'Give me your tired, your poor,
> Your huddled masses yearning to breathe free,
> The wretched refuse of your teeming shore.
> Send these, the homeless, tempest-tost to me,
> I lift my lamp beside the golden door!' "
>
> "The New Colossus" by Emma Lazarus.

We are still worthy of those challenging words in these present challenging days.

Accordingly the court finds and it is ordered that the plaintiff is entitled to pay and the defendant is required to accept the payment of premiums in United States dollars in accordance with the terms of the policy of insurance herein questioned and that such policy is in full force

and effect upon payment of tenders made and all premiums due to date and that the respective parties are bound by all the terms thereof, and that upon maturity, if all payments of premiums and requirements of plaintiff be met, the defendant will become obligated to the plaintiff in accordance with the terms of said policy.

It is further ordered that plaintiff is entitled to recover and that he do have and recover of and from the defendant an attorney's fee for services herein rendered in a sum to be fixed and awarded against the defendant as a reasonable attorney's fee herein upon testimony thereon being presented or upon affidavits if agreed by counsel.

PAN AMERICAN LIFE INSURANCE COMPANY,
a Louisiana corporation, doing business in the
State of Florida

Appellant,

v.

ABRAHAM RAIJ,

Appellee.

No. 62-671.

District Court of Appeal of Florida.
Third District.

May 21, 1963.

Rehearing Denied Oct. 29, 1963
156 So. 2d 785

Before CARROLL, BARKDULL and HENDRY, JJ.

PER CURIAM.

(1) Appellant, defendant in the trial court, appeals a summary final decree adjudicating that a certain policy of insurance issued by it (an American concern) to a Cuban national was still in full force and effect in accordance with its terms, and that the company was required to accept premiums in United States currency and required to pay amounts due under the contract in United States currency.

This action of the trial judge is affirmed upon the authority of Pan American Life Insurance Company v. Agustin Goytisolo Recio, Fla. App., 1963, 154 So. 2d 197.[1]

Affirmed.

---

[1]The policy in the instant case is similar in most material aspects to the policy outlined in the opinion of the cited case.

ON PETITION FOR REHEARING

Before Barkdull, C. J., and CARROLL and HENDRY, JJ.

PER CURIAM.

(2) The appellant has filed a petition for rehearing, pointing out that, in rendering the opinion in this cause, the court overlooked and failed to consider its contention that this transaction was governed by the Bretton Woods Agreement relating to the International Monetary Fund and the Federal legislation pertaining thereto. See: 22 U. S. C. A. Sec. 286 et seq. At the time of the original opinion in this cause, this Agreement was considered and deemed to be not applicable, for the reason that the contract involved was a contract with an American company, made in the United States, payable in United States Dollars; that premiums had been accepted in United States Dollars since 1942, and that the effect of the chancellor's decree was only to require the appellant to continue to accept premium payments in United States Dollars. Not only were we of the opinion that the Bretton Woods Agreement was not applicable to the contract in the instant case, we were further of the opinion that the Bretton Woods Agreement pertained only to contracts "involving the currency of any member" of the Fund and that an American contract, upon which payments were to be made to or by the appellant in United States currency, was not an unenforceable contract within the provisions of Article VIII, Sec. 2(b) of the Bretton Woods Agreement.[1a]

Denied.

[1a] "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member."

PAN-AMERICAN LIFE INSURANCE COMPANY,

Appellant,

v.

AGUSTIN GOYTISOLO RECIO,

Appellee.

No. 62-452

District Court of Appeal of Florida,

Third District.

May 7, 1963

Rehearing Denied June 26, 1963

154 So. 2d 197

PEARSON, TILLMAN, Chief Judge.

The defendant-insurance company appeals a summary final decree for plaintiff-policyholder in an action for declaratory decree. The complaint sought a declaration that the policyholder was entitled to the cash-surrender value of the insurance policy. We affirm.

The complaint of the policyholder made a copy of the insurance policy an exhibit. It appears without conflict that the defendant, Pan-American Life Insurance Company, is a corporation under the laws of the State of Louisiana, having its principal office in New Orleans,

Louisiana. The policy provides for payment thereunder in United States dollars in New Orleans, Louisiana. The defendant-insurance company answered alleging that the acts of the Cuban Government in seizing its assets located in Cuba excused it from further performance under the contract of insurance sued upon. The court granted a summary decree for the plaintiff.

[1] It is the general rule that unless a contrary intention is expressed in the contract, matters connected with the performance are regulated by the law prevailing at the place of performance. Scudder v. Union National Bank of Chicago, 91 U.S. 406, 23 L.Ed. 245 (1875); Brown v. Ford Motor Co., 48 F.2d 732 (10th Cir. 1931); Repsold v. New York Life Ins. Co., 216 F.2d 479 (7th Cir. 1954); see also Restatement, Conflict of Laws #358 (1934).

[2] Clearly then, a contract of a United States corporation payable in the United States in United States dollars cannot be governed by Cuban laws as to the method of performance.

This Court has recently had occasion to make exhaustive inquiry into problems similar to those presented in this appeal. See Confederation Life Ass'n v. Ugalde, Fla.App. 1963, 151 So.2d 315. Under the law set forth in that opinion, the fact that the contract involved in the instant appeal is to be paid in the United States is determinative of the issue of whether the law of this country governs the method of performance.

The additional factor which is present in this case is the contention of the insurance company that the acts of the Cuban Government in seizing the Company's assets

located in Cuba excused the Company from further performance under the contract sued upon. In its answer the defendant-appellant pleaded as one of its defenses that in July of 1960, the Republic of Cuba enacted Law No. 851 which authorized the issuance of resolutions of expropriation, and pursuant thereto, on October 24, 1960, Resolution No. 3 was promulgated, expropriating the Cuban assets of the Pan American Life Insurance Company and substituting the Cuban state as the obligor on existing policies.

After the filing of the answer, the plaintiff moved for a summary final decree. In opposition to the motion the defendant submitted two affidavits, one of Dr. Fernando C. Mendigutia. a Cuban lawyer now resident in Miami, the other of Mr. J. V. Bird, formerly the general manager and agent for Pan American Life Insurance Company in Cuba. In that portion of Dr. Mendigutia's affidavit which is relevant to the defense now discussed, he sets forth his opinion that Law No. 851 of July, 1960, authorized the issuance of decrees of expropriation and nationalization, and that pursuant thereto on October 24, 1960, Resolution No. 3 was signed which expropriated the Cuban assets of Pan American, substituting the Cuban state as the obligor on the Company's Cuban policies including the policy in this suit. Mr. Bird's affidavit sets forth that on October 26, 1960, he delivered all of Pan American's assets to the Cuban administrator appointed under the expropriation resolution.

Appellant argues that expropriation decrees of recognized foreign sovereigns, insofar as they affect the rights of nationals of that sovereign, have been given effect in the courts of this country. In support of this proposition,

it cites many cases holding that under the act of state doctrine the courts of the United States will not recognize a right of action based upon the claimed invalidity of an act of the government of a foreign state affecting its own nationals in its own territory. It is not necessary for us to discuss and analyze the recent developments of the act of state doctrine as this doctrine has been applied to the decrees of the present government of Cuba. This task has been undertaken elsewhere. See Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2d Cir. 1962); Rodriguez v. Pan American Life Ins. Co., 311 F.2d 429 (5th Cir. 1962).

[3] We do not find that the act of state doctrine is applicable to the situation here before us. The appellant, an American insurance company, did business not only in the Republic of Cuba, but in the United States. As previously mentioned, the policy here involved was payable in the United States. Its contact with the law of Cuba was that it was sold there to a Cuban citizen. A fair reading of the policy makes it apparent that an important provision was that the policyholder might travel to the United States and that the policy would be paid in the United States. It must therefore be concluded that the purpose of this provision was to obligate the American company to pay in America without regard to the vicissitudes of Cuban law.

The appellant, insurance company, now asks that the courts enforce the expropriation decrees entered by the present government of Cuba. It asks the enforcement of the decrees by means of an affirmative defense; that is, the denial of the policyholder's recovery because of the existence of the decrees. As authority for its defense, the appellant relies most heavily upon the case of Dough-

erty v. Equitable Life Assur. Soc'y of United States, 266 N.Y. 71, 193 N.E. 897 (1934). It there appeared that Equitable Life and a number of other American life insurance companies had qualified to do business in Russia. They issued policies in Russia to Russian nationals. The Russian branches of the American companies were expropriated by the Soviet Government, which substituted a system of state support of its nationals and abolished the institution of insurance. After recognition of Soviet Russia by the United States, test cases were filed in New York against the companies for various benefits under the policies. The plaintiffs were successful in the lower courts but in the highest appellate court, they failed. As we gather the basis for the holding, it is that inasmuch as the contracts involved were Russian contracts payable in Russia, in Russian funds, and exclusively from Russian assets, the liability would be governed by Russian law. We do not think that this reasoning is applicable to the present case where the total assets of the appellant are pledged to the payment of the contract, and the contract is payable in the United States. As we have previously set forth, it is our holding that the law of the place of payment, or United States law, applies to this contract. Therefore, the expropriation decrees are not a bar to the action upon the policy.

Affirmed.

PAN AMERICAN LIFE INSURANCE COMPANY,
a Louisiana corporation, doing business in the
State of Florida,

Petitioner,

v.

ABRAHAM RAIJ,

Respondent.

No. 33062.

SUPREME COURT OF FLORIDA.
MARCH 25, 1964.

On Rehearing April 22, 1964

Rehearing Denied June 10, 1964.

164 So. 2d 204.

Writ of Certiorari to the District Court of Appeal, Third District.

PER CURIAM.

Conflict certiorari is granted. The decision of the District Court of Appeal herein, having been found to be in conflict with Confederation Life Ass'n v. Ugalde, 164 So. 2d 1, recently decided by this court, is quashed and the cause remanded for disposition not inconsistent with the views expressed in the Ugalde case, supra.

It is so ordered.

DREW, C. J., and THOMAS, ROBERTS, THORNAL, O'CONNELL, CALDWELL and ERVIN, JJ., concur.

ON PETITION FOR REHEARING

PER CURIAM.

We have further considered the cause on petition for rehearing and concluded that jurisdictional conflict does not clearly appear. The writ of certiorari was improvidently issued. Rehearing is granted and the writ is quashed.

It is so ordered.

DREW, C. J., THOMAS, ROBERTS, THORNAL, O'CONNELL, CALDWELL and ERVIN, JJ., concur.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM A. D. 1964

WEDNESDAY, JUNE 10, A. D. 1964

CASE NO. 33,062

PAN AMERICAN LIFE INSURANCE COMPANY, a Louisiana corporation, doing business in the State of Florida,

Petitioner,

-vs-

ABRAHAM RAIJ,

Respondent.

On consideration of the Petition for Rehearing filed by Attorneys for Petitioner,

IT IS ORDERED by the Court that the said petition be, and the same is hereby, denied.

A TRUE COPY.
TEST:

/s/ GUYTE P. McCORD
GUYTE P. McCORD
CLERK SUPREME COURT

(Seal)

SUPREME COURT, U.S.
FILED
OCT 2 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 457

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ABRAHAM RAIJ,

Respondent.

BRIEF OF RESPONDENT

WALL, ROTH & SHERADSKY
1895 S. W. Third Avenue
Miami, Florida

OSCAR A. WHITE
Dupont Plaza Building
Miami, Florida

BY: _____
SAM SHERADSKY
Of Counsel

INDEX OF SUBJECT MATTER

	Page
Respondent's Position	1
Conclusion	3

TABLE OF CASES AND STATUTES

	Page
PAN-AMERICAN LIFE INSURANCE COMPANY v. MARIE LORIDO, 84 S. Ct. 1905 376-U.S. 968	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. _____

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ABRAHAM RAIJ,

Respondent.

BRIEF OF RESPONDENT

RESPONDENT'S POSITION

Respondent, Abraham Raij, respectfully submits to this Honorable Court that the petition for certiorari is without merit and should be denied for the following reason: the facts and law of this case are identical with those found in the case of PAN-AMERICAN LIFE INSURANCE COMPANY, v. MARIE LORIDO, 84 S. Ct. 1905; 376 U.S. 968. As in the Lorido case, Supra, the petitioner issued its life insurance policy on the life of the respondent and delivered the same to the respondent in Cuba. According to the terms of the policy which is the basis for the instant case, all payments by both parties were to be made in United States currency in New

Orleans, Louisiana. There are two slight differences between the cases on the facts as follows:

1). In the Lorido case, the insured had died, thereby obligating the petitioner insurance company therein to pay the proceeds of the policy to the named beneficiary, whereas in the instant case, the type of policy is a twenty-year endowment which the respondent desires to keep in full force and effect, and

2). In the Lorido case, the parties had entered into a novation changing the currency from United States dollars to Cuban pesos, whereas in the case at bar no such novation was made.

Both cases:

(a) involved the same insurance company,

(b) initiated in the Circuit Court of the Eleventh District in and for the State of Florida, thence were appealed to the District Court of Appeals of the Third District of Florida, thence to the Supreme Court of the State of Florida per Writ of Certiorari and lastly by petition and Certiorari to the Supreme Court of the United States, and

(c) contain the same questions and argument by petitioner and the same reasons for the allowance of the writ.

CONCLUSION

It is respectfully submitted that the Lorido case is identical with the instant case and the holding therein should be applied to the case at bar for the reasons given in the Lorido case and the petitioner's petition for Writ of certiorari should be denied.

WALL, ROTH & SHERADSKY
1895 S. W. Third Avenue
Miami, Florida

OSCAR A. WHITE
Dupont Plaza Building
Miami, Florida

Samuel Sheradsky

SAM SHERADSKY
Of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of October, 1964, a true copy of the foregoing Brief of Respondent was mailed to JAMES A. DIXON, 101 East Flagler Street, Miami, Florida and SAM DANIELS, 1414 Dupont Bldg., Miami, Florida.

WALL, ROTH & SHERADSKY

SAMUEL SHERADSKY